IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 21 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI MOHANLAL PADIA

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHAPATTI FOR BM TRIVEDI for Petitioner

MR RC KODEKAR, APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR BS PATEL for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/01/2001

ORAL JUDGEMENT

This Criminal Revision Application has been preferred against the order dated 22-11-1991 passed by the learned Addl. Sessions Judge, Vadodara in Criminal

Revision Application No.189 of 1988 whereby he has set aside the order dated 7-10-1988 passed below Ex.41 in Criminal Case No.28896 of 1984 by the learned Judicial Magistrate (First Class), Vadodara and dropped the process issued by the learned Judicial Magistrate (First Class), Vadodara against the present respondent No.2.

2. The facts emerged from the record and proceedings are that present respondent No.3, Smt.Raksha Smit Patel sent one application on 22-7-1983 to the Commissioner of Police, Vadodara stating that she was working as a Receptionist in the circle office of G.E.B., Gotri Road, Vadodara and the present petitioner, who was also working in the G.E.B. as an Accounts Officer, used to harass her over her residential telephone by using abusive language and demanding illicit relation. On receiving the said application, Commissioner of Police instructed the Police Inspector, Gama Squad by the letter dated 22-7-1983 to contact Mrs.Rakshaben Patel and on 6-8-1983, a trap was arranged accordingly and present petitioner was caught red handed and complaint was registered to that effect against him for the offences punishable under Secs.294, 506, 354, etc. of Indian Penal Code. At the end of investigation, charge-sheet was submitted against him. On conclusion of trial, present petitioner was acquitted by the learned Judicial Magistrate (First Class), Vadodara vide judgment and order dated 21-6-1984. This incident encouraged the present petitioner to file Criminal Case No.28896 of 1984 directly into the Court of learned Judicial Magistrate (First Class) against the PSI i.e. present respondent No.2 and the original complainant i.e. present respondent No.3-Smt.Raksha Smit Patel under Sec.500 of Indian Penal Code. On receiving the same, learned Magistrate issued process against the present respondent Nos.2 and 3 under Sec.500 of IPC. Against said order, present respondent No.2 submitted an application Ex.41 into the Court of learned Addl. Sessions Judge, Vadodara, requesting to drop the process issued against him as he is a public servant within the meaning of Sec.197(2) of Cr.P.C. and whatever alleged offence that has been committed by him has been done during the course of discharging his official duty as a public servant and, therefore, he is getting protection under Sec.197. It was also submitted by him that present criminal case has been filed by the present petitioner without obtaining prior sanction and, therefore, process issued against him required to be dropped. The said application was allowed by the learned Addl. Sessions Judge, Vadodara vide order dated 22-11-1991 whereby the order below Ex.41 passed by the learned J.M.F.C. was set aside and process issued against the respondent No.2 was

dropped which is giving rise to file the present application.

3. As regards maintainability of this petition, this Court has jurisdiction as held by the Apex Court in Krishnan and another Vs. Krishnaveni and another, (1997) 4 SCC 241. The Apex Court in para 14 of the above reported judgment has held as under:

> "We hold that though the revision before the High Court under sub-section(1) of section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the Courts below."

It has been held by the Apex Court that second revision before the High Court after dismissal of first one by the Court of Sessions is barred under Sec.397(3) of Cr.P.C. However, inherent power of High Court is still available under Sec.482 of Cr.P.C., but such inherent power must be exercised sparingly so as to avoid needless multiplicity of procedure leading to miscarriage of justice.

4. Keeping in mind the above aspects of the matter, I have heard Mr.M.J.Buddhapatti for the petitioner, Mr.R.C.Kodekar, learned APP for the respondent No.1 and Mr.B.S.Patel, learned advocate for the respondent No.3. The respondent No.2 did not remain present though duly served. I have also gone through the reasoned order passed by the lower revisional Court.

5. Learned advocate for the petitioner has relied on (1997) 5 Supreme Court Cases 326 in the case of Shambhoo Nath Mishra Vs. State of U.P. and others and more particularly para 5 which reads as under:

> "The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or

misappropriate the public fund etc."

6. There cannot be any dispute regarding the principle laid down by the Apex Court in the above reported judgment. But the above cited judgment is not at all applicable to the facts of the present case as the present respondent No.2 was investigating the matter as directed by his superior i.e. the Commissioner of Police, Vadodara and during the course of investigation, a trap was arranged and present petitioner was caught red handed and, therefore, it is clear that he was discharging his duties as a public servant.

7. It is not in dispute that the present petitioner was serving as a PSI at the relevant time and he was a public servant within the meaning of Sec.197(2) of Cr.P.C. It has been established from the record and proceedings and from the order passed by the court below that there was an incident previous to the present one wherein present respondent No.2 was discharging his duty as a public servant as directed by the Commissioner of Police, Vadodara in connection with an application received by the Commissioner of Police from the present respondent No.3. As the respondent No.2 was discharging his duty as a public servant, he is entitled to protection under Sec.197(1) of Cr.P.C. and, therefore, without obtaining previous sanction, the complaint filed against him for the alleged offence cannot be proceeded with in the trial. Keeping in mind the above aspect of the matter, lower revisional Court has rightly allowed the Criminal Revision Application and rightly dropped the process issued against the present respondent No.2 and I do not find any illegality in the said order passed by the leaned Addl. Sessions Judge, Vadodara.

8. As far as the respondent No.3 is concerned, as per the facts established from the record and proceedings, she is the victim of the telephonic harassment alleged to have been done by the present petitioner. It is to be noted that the impugned complaint is of the year 1984 and today we are in 2001. Looking to the nature of the alleged offence and the history behind filing of the impugned complaint, I am of the opinion that it is a fit case wherein the proceedings initiated against the respondent No.3 are required to be dropped under Sec.482 of Cr.P.C. though it has not been prayed by the respondent No.3 as has been held by the Apex Court in Ashok Chaturvedi and others Vs. Shitul H. Chanchani and another, AIR 1998 S.C. 2796. The Apex Court in the reported judgment has held at head note (B) as under:

"Penal Code (45 of 1860), S. 463--Forgery--Complaint as to--Quashing of order taking cognizance--Bald allegation in complaint that shares of complainant have been transferred on forged signatures--no iota of material to indicate how all or any of the accused were involved in alleged forgery--Statement of complainant as well as witness not lending any support--Said allegations as well as statements not making out offences under Ss.406, 420, 467, 468 and 120-B--Order taking cognizance thus not proper--Quashed in respect of accused persons who preferred special leave as well those who did not prefer such special leave petition."

The Apex Court in the above reported case, while dropping the criminal case in respect of accused persons who have preferred special leave petition has dropped the criminal case in respect of other two persons also who have not preferred special leave petition.

9. After having come to the conclusion that the proceedings initiated against the respondent No.3 are required to be dropped, it would be futile if the criminal proceedings are allowed to continue in respect of respondent No.3 as there is no prime facie evidence against her for continuing the process which has been issued by the learned Magistrate as has been held by the Apex Court in Ashok Chaturvedi (supra) and hence, in order to meet the ends of justice the proceedings initiated against the respondent No.3 are also required to be dropped.

10. In view of the aforesaid discussion, this Criminal Revision Application is rejected. Rule is discharged. The proceedings initiated against the present respondent No.3-Smt. Raksha Smit Patel be dropped.

(R.P.DHOLAKIA,J.)
radhan/